THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 13453 of 2005

O r d e r:

The petitioner having joined the services of the respondents-APSRTC as Conductor in 1973 was promoted as Assistant Depot Clerk on 28.06.1991, and upon attaining the age of superannuation, he retired from the said post on 30.06.2004. The petitioner states that as per Circular No. PD-65/1989, dated 03.06.1989, every workman on completion of 12 years service is entitled to Special Grade/Stagnation Increments. As the successive representations of the petitioner for grant of Special Grade/Stagnation Increments, did not evoke any response from the respondents till he retired from service, the petitioner filed writ petition in W.P. No. 571 of 2005, and this Court by order dated 02.02.2005 disposed of the same directing the respondents to grant Special Grade/Stagnation Increments as per Rules. In pursuance of the said order, respondent No.1 having considered the claim of the petitioner, vide proceedings dated 28.05.2005, rejected the same on the ground that as per Circular No. PD-42/1994, dated 24.05.1994, he is not entitled to Special Grade/Stagnation Increments, and it is this order, which the petitioner has called in question in this writ petition.

The learned counsel for the petitioner submits that the petitioner having been promoted to the post of Assistant Depot Clerk on 28.06.1991, completed 12 years of service in the said post on 27.06.2003, and in terms of Circular No. PD-65/1989, dated 03.06.1989, he is entitled to grant of Special Grade/Stagnation Increments, and as such, the action of respondent No.1 in rejecting the claim of the petitioner for grant of Special Grad/Stagnation Increments on the ground that as per Circular No. PD-42/1994, dated 24.05.1994,

he is not entitled to, is illegal and arbitrary, and more so when the said Circular is prospective. He thus prayed that the impugned order be set aside.

The respondents-APSRTC filed counter. The learned Standing Counsel for the respondents reiterating the counter averments submitted that the petitioner was promoted to the post of Assistant Depot Clerk on 28.06.1991. As per Circular No. PD-42/1994, dated 24.05.1994, which was issued by the respondents in modification of Circular No. PD-65/1989, dated 03.06.1989, Special Grade/Stagnation Increments, will be granted to those employees who have completed 12 years of service in a post, in the month of August every year instead of May of every year. The petitioner, who was promoted to the post of Assistant Depot Clerk on 28.06.1991, completed 12 years of service in the said post on 27.06.2003, but having regard to the fact that the petitioner was placed under suspension from 05.11.2002 to 23.12.2002, which period was treated as not on duty, he should be treated to have completed 12 years of service on 17.08.2003, and therefore, his case for grant of Special Grade/Stagnation Increments would fall for consideration in the month of August, 2004, and since the petitioner retired on 30.06.2004, on attaining the age of superannuation, his case was rejected, and no exception can be taken thereto.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

According to the petitioner, as per Clause 8 of Circular No. PD-65/1989, dated 03.05.1989, he having completed 12 years of service in the post of Assistant Depot Clerk, is entitled for grant of Special Grade/Stagnation Increments, while it is the case of the respondents that the petitioner having completed 12 years of service much after the cutoff period, in terms of Circular No.PD-42/1994, dated 24.05.1994, he is not entitled to grant of Special Grade/Stagnation

Increments.

The petitioner, admittedly, was promoted to the post of Assistant Depot Clerk on 28.06.1991. In the normal course, he would have completed 12 years of service in the said post on 27.06.2003, but as he was under suspension from 05.11.2002 to 23.12.2002, which period was treated as not on duty, he completed 12 years of service in the said post on 17.08.2003.

To consider whether or not the petitioner is entitled to grant of Special Grade/Stagnation Increments, the relevant clauses in the two circulars with reference to the cutoff dates, may be noticed.

As per Clause 3 of Circular No. PD-66/1989, dated 03.05.1989, those employees who have completed 12 or more years of service in the category as on 30 April, 1989, and every year as on 30 April of that year, employees who have crossed 12 years of service in the category, will be placed on the Special Grades on 1st May of that year. While so, in the year 1994, a memorandum of settlement was reached between the Management and the recognized Union on the revised scales of pay 1993. In pursuance of the said agreement, which was entered on 28.04.1994, it was agreed by the Management and the recognized Union to change the cut off date for placement in Special Grades, from 30th April of that year to 31st July of that year. In view of this, Clause 3 of Circular No. PD-65/1989, dated 03.05.1989, came to be amended by issuing Circular No. PD-42/1994, dated 24.05.1994, which reads as follows:

> With effect from 01.08.1994 instead of 1st May, 1994 to the eligible employees who have completed 12 years or more years in the category as on 31st July, 1994 instead of 30th April, 1994, and every years as on 31st July of that year, employees who have crossed twelve (12) years of service in the category as such, will be placed on Special Grade on 1st August of that year.

Except change of cut off date fixed in Clause 3 of Circular No. PD-65/1989, dated 03.05.1989, there is no alteration or change of the

other clauses. From a reading of amended Clause 3, it becomes clear that from the year 1994 onwards, review of cases of employees, who have completed 12 years of service in the cadre as such for placement in Special Grades, will be made on 1st August of every year instead of 1st May of every year, by taking the cut off date as 31st July instead of 30th April.

In view of the change of cutoff date for grant of Special Grade/Stagnation Increments from 31st July instead of 30th April, it may be noticed, whether the petitioner is entitled to grant of Special Grade/Stagnation Increments, in terms of the amended Clause 3. As observed supra, the petitioner in the normal course, would have completed 12 years of service in the post on 27.06.2003, and if the period he was under suspension from 05.11.2002 to 23.12.2002, is included, he would complete 12 years of service on 17.08.2003. Thus, it is clear that as on 31st July, the cutoff date fixed in Circular No. PD-42/1994, dated 24.5.1994, the petitioner did not complete 12 years, but he completed 12 years of service, much after that date i.e. on 17.08.2003. Though the petitioner completed 12 years of service in the post, much after the cutoff date on 17.08.2003, the fact remains, the respondents-APSRTC, except changing the cutoff date in Clause 3 of Circular No. PD-65, dated 30.05.1989 from 30th April of every year to 31st July of every year, as fixed in Circular No. PD-42/1994, dated 24.05.1984, did not change the other guidelines issued on sanction of Special Grade in various Circulars, which includes Circular No. PD-65/1989, dated 03.05.1989.

It is the contention of the petitioner that as per Clause 8 of Circular No. PD-65/1989, dated 03.05.1989, which stood unamended, he is entitled to grant of Special Grade/Stagnation Increments, immediately upon resumption to duty. To consider this contention, it is

appropriate to extract Clause 8 of Circular No. PD-65/1989, dated 03.05.1989, which reads thus:

> If an employee who is eligible for Special Grade is on extraordinary leave or under suspension as on 30th April of that year, he will be entitled to the Special Grade from the date of his/her resumption to duty.

A reading of the above would make it clear that an employee who is eligible for Special Grade is on extraordinary leave or under suspension as on 30 April of that year (read 31st July of that year in view of change of cutoff date), will be entitled to Special Grade from the date of his/her resumption to duty. Though the petitioner as on 31st July, 2003 was neither on extraordinary leave nor under suspension, the fact remains, during the interregnum of the 12 year period, he was placed under suspension from 05.11.2002 to 23.12.2002, on which date, his suspension having been revoked, resumed to duty immediately. When an employee, who is under suspension as on 31st July is entitled for grant of Special Grade/Stagnation Increments immediately upon his resumption to duty, I fail to understand how the respondents can deny Special Grade/Stagnation Increments to the petitioner, who admittedly, during the interregnum period of 12 years, having been placed under suspension, resumed to duty much before 31st July, the cutoff date fixed for computing the period of 12 years. In fact, the petitioner stands on a better footing than an employee, who is under suspension as on 31st July. Since the petitioner, much before the cutoff date, during the interregnum period of 12 years was placed under suspension and also resumed to duty after revocation of his suspension, having regard to Clause 8 of Circular No. PD-65/1989, dated 03.05.1989, which states that an employee who is under suspension or on extraordinary leave as on the cutoff date, will be entitled to Special Grade from the date of his/her resumption to duty, which stood unamended by issuance of Circular No. PD-42/1994, dated 24.05.1994, the petitioner having resumed to duty much before

the cutoff date i.e. 31st July, in pursuance of the revocation of his suspension, is entitled to grant of Special Grade/Stagnation Increments, immediately upon his completing 12 years of service, and more so when he did not retire from service as on that date. In that view of the matter, the action of the respondents in denying Special Grade/Stagnation Increments to the petitioner on his completing 12 years of service, is illegal and arbitrary.

In the above view of the matter, the writ petition is allowed. The respondents are directed to grant Special Grade/Stagnation Increments to the petitioner from 17.08.2003, on which date he completed 12 years of service. No costs.

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N.V. RAMANA, J.

Date: 30th June, 2006.
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